

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

STATE OF INDIANA)
) SS
COUNTY OF MARION)

**SUZANNE WITWER,
Complainant,**

DOCKET NO. EMra79111474

v.

**SEARS, ROEBUCK AND CO.,
Respondent.**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Comes now Respondent Sears, Roebuck and Co. (hereinafter "Sears"), by counsel, and files its Motion to Dismiss, which Motion is in words and figures as follows:

(H. I.)

And comes now Complainant Suzanne Witwer (hereinafter "Witwer"), by counsel, and files her Response To Motion To Dismiss, which Response is in words and figures as follows:

(H. I.)

And comes now James a. Lang, Chairman of the Indiana Civil Rights Commission (hereinafter "ICRC") and enters his Recommended Findings of Fact, Conclusions of Law, and Order, which are in words and figures as follows:

(H. I.)

And comes now Witwer, by counsel, and files her Objections to Findings and Order, which Objections are in words in figures as follows:

(H. I.)

And comes now Sears, by counsel, and files its Reply To Objections To Finding and Order, which Reply is in words and figures as follows:

(H. I.)

And comes now ICRC and holds its Hearing On Objections on June 19, 1980. Commissioners Lang, Kinerk, Shafer, and Staples were present. Commissioner Boyd, Carvey, and Coleman were absent. Complainant Witwer was present and was represented by counsel, Mr. George V. Fillippello. Respondent Sears was represented by counsel, Mr. Donald J. Spero. At the close of the hearing the parties were allowed to submit briefs within twenty (20) days. Having considered the briefs, the arguments advanced by counsel at the Hearing, the Objections filed by Witwer, the Reply filed by Sears, and being duly advised in the premises, ICRC finds and rules as follows:

1. The provision for transfer and relation back upon which Witwer relies, [incorrectly cited in the Memorandum as IC 22-9-1-13(d)], provides, in material part, as follows:

...Any complaint filed with a local agency may be transferred by the local agency to the Commission if the Commission has jurisdiction.... IC 22-9-1-12.1 (d). (emphasis supplied).

2. If the case is to be transferred, that must be done by the local agency. *Id.*

3. Witwers reference in the Memorandum, to I.A.R. R. (22-9-1-6)-5(B) apparently is to what is now recodified as 910 IAC 1-2-4(B). This rule was promulgated on March 29, 1974, approximately five (5) years before the enactment of action 12.1(d) and if it is “consistent with the provisions of [the Indiana Civil Rights Law]”, IX 22-9-1-6(c), and thus within ICRC’s rule-making authority, it can pertain only to cases transferred pursuant to section 12.1(d).

4. Witwer’s Memorandum also asserts that the law provides that a complaint can be filed within ninety (90) days of notification to the complaint of a local agency’s final decision. Though this argument may well have been waived by Witwer’s failure to assert it in the aforementioned objections, we prefer to address it.

5. The provision is a part of the definition of the term “complaint” and reads, in material part, as follows:

...Wherein complainant has been actively pursuing a complaint with any agency created pursuant to section 12.1 of this chapter, the ninety (90) day limit shall commence upon notification to the complainant of the agency’s final decision. IC 22-9-1-3(o)

6. Witwer may not avail herself of this provision for either of two reasons: (1) this portion of Section 3(o) is in conflict with Section 12.1(d) and the latter, having been more recently adopted than the former, has impliedly repealed it; or (2) even if the facts asserted by Witwer in her Response To Motion To Dismiss are accepted as true, her efforts with the South Bend Human Rights Commission could not be deemed as “actively pursuing” her complaint.

IT IS THEREFORE, ORDERED

1. Witwer's Objections to Findings and Order should be, and the same hereby are, overruled
2. The Findings of Fact, Conclusions of Law, and Order recommended by the Chairman, are hereby adopted as an Order of this Commission

Dated: July 25, 1980

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
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COUNTY OF MARION)**

**SUZANNE WITWER,
Complainant,**

DOCKET NO. EMra79111474

v.

**SEARS, ROEBUCK AND CO.,
Respondent.**

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Comes now Respondent, Sears, Roebuck and Co. (hereinafter "Sears"), by counsel, and files its Motion To Dismiss, which Motion is in words and figures as follows:

(H. I.)

And comes now Complainant, Suzanne Witwer (hereinafter "Witwer"), by counsel, and files her Response to Motion To Dismiss, which response is in words and figures as follows:

(H. I.)

And comes now James A. Lang, Chairman of the Indiana Civil Rights Commission (hereinafter "ICRC"), having considered the above and being duly advised in the premises, and recommends, pursuant to IC 4-22-1-12 and 910 IAC 1-12-1(B), the entry of the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Witwer filed a complaint with ICRC on November 16, 1979, which alleges a racially discriminatory layoff by Sears on August 26, 1974.
2. Witwer allegedly filed a complaint with the South Bend Human Rights Commission (hereinafter "SBHRC") contesting this layoff on September 17, 1974.
3. Any Conclusions of Law that should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSION OF LAW

1. IC 22-9-1-3(o) provides, in material part that

...[n]o complaint shall be valid unless filed within ninety days of the alleged discriminatory practice.... Wherein complainant has been actively pursuing a complaint with any agency created pursuant to Section 12.1 of this chapter, the ninety day limit shall commence upon notification to the Complainant of the agency's final decision. IC 22-9-1-3(o).

2. Witwer's complaint was not filed within ninety (90) days of the alleged discriminatory practice.
3. If Witwer did not file a complaint with SBHRC, the complaint was not timely filed.
4. If Witwer did file a complaint with SBHRC, she has foreclosed from filing this complaint with ICRC because IC 22-9-1-12.1(d) which was effective on April 9, 1979 prior to the date the instant complaint was fled, provides as follows:

Any person who files a complaint with any local agency may not also file a complaint with the Indiana Civil rights Commission concerning any of the matters alleged in such complaint, and any person who files a complaint with the Indiana Civil Rights Commission may not also file with any local agency concerning any of the matters alleged in such complaint... . IC 22-9-1-12.1(d).

5. Any Finding of Fact that should have been deemed to be a Conclusion of Law is hereby adopted as such.

ORDER

1. Sears' Motion To Dismiss should be, and the same hereby is, granted.
2. Witwer's complaint should be, and the same hereby is, dismissed.

Dated: May 16, 1980